

AMENDED IN ASSEMBLY AUGUST 8, 2008

AMENDED IN ASSEMBLY JULY 11, 2007

AMENDED IN ASSEMBLY JUNE 28, 2007

AMENDED IN SENATE APRIL 23, 2007

SENATE BILL

No. 133

Introduced by Senator Aanestad
(Coauthors: Senators Cogdill, Cox, and Wiggins)
(Coauthor: Assembly Member Berg Galgiani)

January 24, 2007

An act to amend Section 12404 of, and to add Article 8 (commencing with Section 12418) to Chapter 1 of Part 6 of, ~~Division 2 of~~ *Division 2 of*, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 133, as amended, Aanestad. Title insurance: title solicitors.

The Insurance Commissioner generally regulates insurance, including title insurance. Violation of certain of these provisions is a misdemeanor.

This bill would prohibit a person from ~~marketing title insurance~~ *being employed as a title marketing representative* unless he or she holds a valid certificate of registration as a title marketing representative issued by the commissioner for a ~~5-year~~ *3-year* period. *This bill would exempt specified activities from its scope.* Violation of these provisions would be a misdemeanor, pursuant to provisions of existing law.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

This bill would define "title marketing representative" and provide that this does not include a person whose primary duties directly involve

the creation, production, or issuance of the title policy or the performance of escrow services.

This bill would provide that if a person markets title insurance without a valid certificate, as defined, the commissioner may issue a cease and desist order prohibiting that person from further marketing. *This bill would require title companies to notify the commissioner when a title marketing representative is terminated or employed, as specified.*

This bill would specify the information that the applicant for a certificate must supply in writing under penalty of perjury to the commissioner.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

~~This bill would provide a process and set a fee for certificate renewal~~ *specify an application process for the certificate of registration and provide that the commissioner shall set a fee to obtain or renew a certificate in an amount sufficient to defray the actual costs of processing the application.*

~~This bill would provide that the department~~ *Department of Insurance* may revoke, suspend, restrict, or decline to issue a certificate of registration if it determines, after a hearing, that the title marketing representative has committed specified acts. The bill specifies other remedies available to the commissioner for misconduct.

~~The bill would require the commissioner to issue and adopt rules and regulations, as necessary, to administer the title marketing representative program and would provide that bill would not become effective until any regulations adopted are approved by the Office of Administrative Law.~~

The bill would make a technical change by deleting an obsolete statutory cross-reference.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 12404 of the Insurance Code is amended to read:

12404. (a) It is unlawful for any title insurer, underwritten title company or controlled escrow company to pay, directly or indirectly, any commission, compensation, or other consideration to any person as an inducement for the placement or referral of title business. Actual placement or referral of title business is not a precondition to a violation of this section, whether the violation is or is not a per se violation pursuant to subdivision (c).

(b) For purposes of this section, the following definitions are applicable:

(1) *“Compensating balance” is a balance maintained in a lending institution by any title insurer, underwritten title company, or controlled escrow company for the express or implied purpose of influencing the extension of credit to a third party or the provision of goods, services, or benefits to a third party as an inducement for the placement or referral of title business by a third party.*

~~(1)~~

(2) “Person” means any individual or entity who is any owner or prospective owner, lessee or prospective lessee of real property or any interest therein, any obligee or prospective obligee of an obligation secured or to be secured either in whole or in part by real property or any interest therein, or any person who is acting or who is in the business of acting as agent, representative, attorney, or employee of those persons.

~~(2)~~

(3) “Title business” means the “business of title insurance” as defined in Section 12340.3, and includes, but is not limited to, the offering of title insurance, escrow, or other services by a title insurer, underwritten title company, or controlled escrow company.

~~(3) “Compensating balance” is a balance maintained in a lending institution by any title insurer, underwritten title company, or controlled escrow company for the express or implied purpose of influencing the extension of credit to a third party or the provision of goods, services or benefits to a third party as an inducement for the placement or referral of title business by a third party.~~

(c) The following activities, whether performed directly or indirectly, are deemed per se inducements for the placement or referral of title insurance business by any person and are unlawful:

(1) Paying or offering to pay, furnishing or offering to furnish, or providing or offering to provide assistance with the business expenses of any person, including, but not limited to, rent, employee salaries, furniture, copiers, facsimile machines, automobiles, telephone services or equipment, or computers.

(2) Providing or offering to provide any form of consideration intended for the benefit of any person, including cash, below market rate loans, automobile charges, or merchandise or merchandise credits.

(3) Placing or offering to place on behalf of any person, compensating balances.

(4) Advancing or paying or offering to advance or pay money on behalf of any person into an escrow to facilitate the closing thereof, other than any sum which represents the proceeds of a loan made in the ordinary course of business; or an advance not to exceed 2 percent of the sales price of the real property being sold or exchanged through the escrow or the amount of any loan secured by real property involved in the escrow, whichever is greater; or the extension of credit or an advance for the costs, fees and expenses of the escrow or of the title insurance issued or to be issued in connection therewith.

(5) Disbursing or offering to disburse on behalf of any person escrow funds held by a title insurer, underwritten title company or controlled escrow company before the conditions of the escrow applicable to that disbursement have been met, or in a manner which does not conform to Section 12413.1, including disbursing or offering to disburse before the expiration of the appropriate period established in Section 12413.1.

(6) Furnishing or offering to furnish all or any part of the time or productive effort of any employee of the title insurer, underwritten title company, or controlled escrow company to any person for any service unrelated to the title business.

~~(d) Reasonable expenditures for food, beverages, entertainment, educational programs, and promotional items constituting ordinary business expenses are deemed not to constitute an inducement for the placement or referral of title business, if the expenditures are correctly reported and properly substantiated as an ordinary and~~

1 ~~necessary business expense under provisions of the Internal~~
2 ~~Revenue Code and regulations issued thereunder, and the~~
3 ~~expenditures do not violate any other section of law, including,~~
4 ~~but not limited to, Section 10177.4 of the Business and Professions~~
5 ~~Code.~~

6 (7) *Advertising or paying for the advertising in any newspaper,*
7 *newsletter, magazine, or publication that is produced by, or on*
8 *behalf of, a person, or that results in a direct, or indirect, subsidy*
9 *to a person.*

10 (8) *Expenditures for food, beverages, and entertainment for a*
11 *person.*

12 (d) *Expenditures for the following are not deemed to be unlawful*
13 *or in violation of this section:*

14 (1) *Promotional items with a permanently affixed company logo*
15 *of the underwritten title company, title insurer, or controlled*
16 *escrow company, with a value of not more than ten dollars (\$10)*
17 *each. "Promotional item" does not include a gift certificate, gift*
18 *card, or other item that has a specific monetary value on its face,*
19 *or that may be exchanged for any other item having a specific*
20 *monetary value.*

21 (2) *Furnishing education or educational materials exclusively*
22 *related to the business of title insurance for a person if continuing*
23 *education credits are not provided.*

24 (3) *Other expenditures for a person, as permitted by the*
25 *Department of Insurance by regulation.*

26 (e) The provision or payment of any form of consideration as
27 an inducement for the placement or referral of title business not
28 specifically set forth in this section shall not be presumed lawful
29 merely because they are not specifically prohibited.

30 (f) The Insurance Commissioner may determine compliance
31 and enforce the provisions of this section by written order,
32 regulation or written consent which may take into consideration
33 standards, conditions, guidelines, principles, or definitions utilized
34 by other states or federal agencies but those standards, conditions,
35 guidelines, principles, or definitions shall not be determinative.

36 (g) It is the intent of the Legislature that the enactment of this
37 section shall have no effect on the applicability of other sections
38 of the Insurance Code that are in existence prior to the enactment
39 of this section and which specifically, or by implication, refer to
40 this section. The Legislature hereby intends that this section,

1 including the specific terms employed within it, shall be liberally
2 construed for the purpose of protecting consumers of title business.

3 SEC. 2. Article 8 (commencing with Section 12418) is added
4 to Chapter 1 of Part 6 of Division 2 of the Insurance Code, to read:

5
6 Article 8. Title Insurance Representatives
7

8 12418. (a) No person shall ~~market title insurance~~ *be employed*
9 *as a title marketing representative* in this state unless the person
10 holds a valid “certificate of registration” as a title marketing
11 representative issued by the commissioner pursuant to Section
12 12418.1.

13 (b) For purposes of this article, “title marketing representative”
14 means a natural person employed by a title insurer, underwritten
15 title company, or controlled escrow company whose primary duty
16 is to market, *offer, solicit, negotiate, or sell* title insurance, as
17 defined in Section 12340.1 ~~and receives compensation through~~
18 ~~bonuses or commission based on the percentage or amount of title~~
19 ~~insurance policies or escrow services sold through his or her~~
20 ~~marketing efforts~~. A title marketing representative does not include
21 a person whose primary duties directly involve the creation,
22 production, or issuance of the title policy or the performance of
23 escrow services.

24 (c) If any person knowingly markets title insurance without
25 having applied for or obtained a certificate of registration pursuant
26 to Section 12418.1, the commissioner may issue a cease and desist
27 order pursuant to Section 12921.8.

28 12418.1. (a) A certificate of registration as a title marketing
29 representative shall be applied for and renewed by filing with the
30 commissioner a written application. The application shall be on a
31 form prescribed by the commissioner, and shall prescribe the
32 disclosure of information that will aid the commissioner in
33 determining whether the prerequisites for the certificate have been
34 met. The applicant shall certify that the contents of the application
35 are true and correct under penalty of perjury.

36 (b) Each application for a certificate of registration shall contain
37 the following information:

38 (1) The residence address, the principal business address, and
39 the mailing address of the applicant.

(2) A statement, signed by an officer of the business by whom the applicant is or will be employed, certifying that the applicant will be provided training regarding Article 6 (commencing with Section 12404) within ~~six months~~ 60 days of the hiring date or date of application.

(3) *A statement, signed by the applicant, as to whether he or she has previously had a certificate of registration revoked, suspended, or otherwise limited under Section 12418.4.*

(c) Each application to obtain or renew a certificate of registration shall be accompanied by a filing fee of _____ dollars (\$_____); *in an amount determined by the department to be sufficient to defray the department's actual costs of processing the application, not to exceed two hundred dollars (\$200).* An application shall not be deemed filed unless it has been delivered to the department accompanied by the proper filing fee.

(d) The commissioner may decline to act on an incomplete or defective application until an amended application that completes the prescribed form has been filed with the department. In the event that the application is found to be defective or incomplete, the department shall notify the applicant and his or her employer in writing that the application needs to be modified and resubmitted within 15 days of receipt of this written notification.

(e) An applicant submitting an application filed with the department for a certificate of registration as a title marketing representative may solicit, sell, or market title insurance, as defined in Section 12340.1, in the interim time period preceding the formal approval or rejection of the application, *but shall be subject to the same compliance requirements as a holder of an approved certificate of registration. An applicant with a pending application shall be deemed to be operating on a provisional basis.*

(f) *In the event that the title marketing representative's employment with a title company is terminated, the title company formerly employing the title marketing representative shall notify the department within 30 days of the termination. If the title marketing representative becomes employed by another title company as a title marketing representative, the new employer shall notify the department of the title marketing representative's new employment within 30 days of the commencement of that employment.*

1 (g) *An applicant who has previously had a certificate of*
2 *registration revoked, suspended, or otherwise limited under*
3 *subdivision (d) of Section 12418.4 may not sell, solicit, or market*
4 *title insurance during the interim period described in subdivision*
5 *(e).*

6 12418.2. (a) An applicant or holder of a certificate of
7 registration as a title marketing representative is not required to
8 pass a qualifying examination, and is exempt from prelicensing
9 and continuing education requirements, except as specified in
10 paragraph (2) of subdivision (b) of Section 12418.1.

11 (b) Upon the filing of an application for the issuance or renewal
12 of a certificate of registration, the commissioner may conduct an
13 investigation, *during the interim period set forth in subdivision*
14 *(e) of Section 12418.1*, to determine if the applicant shall be granted
15 the certificate of registration by virtue of prior conduct in the
16 marketing of policies of title insurance and to verify the accuracy
17 of the information submitted by the applicant to the ~~Department~~
18 ~~of Insurance~~ department and may require the filing of any
19 supplementary documents, affidavits, and statements that may be
20 necessary to determine whether training specified in paragraph (2)
21 of subdivision (b) of Section 12418.1 has been, or will be, provided
22 to the applicant within the time period set forth in Section 12418.1.
23 Should the commissioner decline to approve the granting of a
24 certificate of registration, the procedure set forth in subdivision
25 (c) of Section 12418.4 shall apply.

26 12418.3. (a) Each certificate of registration issued under this
27 article shall be for a ~~five-year~~ *three-year* period beginning on the
28 date the certificate is issued.

29 (b) Not less than 60 days before a certificate of registration will
30 expire, the commissioner shall mail an application to renew the
31 certificate to the last known address appearing on the registrant's
32 records. It shall be the responsibility of the registrant to renew his
33 or her certificate, whether or not a renewal notice is received.

34 (c) The application for renewal of an expired certificate of
35 registration may be filed after the expiration date and until the
36 same month and day of the next succeeding year. In addition to
37 the fee for a renewal application, a delinquent application fee in
38 the amount of fifty dollars (\$50) shall be assessed for each
39 application for renewal filed after the expiration date. Each
40 registrant shall be subject to payment of delinquent application

1 fees under this subdivision. The commissioner may waive the
2 delinquent application fee, or accept a renewal filed after the date
3 specified in this subdivision, if the registrant's failure to comply
4 is due to clerical or other inadvertent error on the part of the
5 department.

6 12418.4. (a) The provisions set forth in Sections 1667, 1668,
7 1669, 1670, 1738, 1738.5, 1743, and in Article 6 (commencing
8 with Section 12404), shall apply to all applicants or holders of a
9 certificate of registration issued pursuant to this article.

10 (b) The department may revoke, suspend, restrict, or decline to
11 issue a certificate of registration if it determines that the title
12 marketing representative *or applicant* has violated provisions of
13 Article 6 (commencing with Section 12404) pursuant to the due
14 process and hearing requirements set forth in subdivision (c).

15 (c) Except as provided in Section 1669, a certificate of
16 registration shall not ~~fail to be issued~~, *be* denied, restricted,
17 suspended, or revoked without a hearing conducted in accordance
18 with Chapter 5 (commencing with Section 11500) of Part 1 of
19 Division 3 of Title 2 of the Government Code.

20 (d) In addition to, or in lieu of, any other penalty that may be
21 imposed under this article against a title marketing representative,
22 the commissioner may bring an *administrative* action against a
23 title marketing representative for any violation of the provisions
24 of Article 6 (commencing with Section 12404). If a title marketing
25 representative charged with a violation of Article 6 (commencing
26 with Section 12404) is determined by the commissioner to have
27 committed the violation, the commissioner may require the
28 surrender of, temporarily suspend or revoke either permanently or
29 temporarily the title marketing representative's certificate of
30 registration, and, in addition, may impose a monetary penalty. Any
31 payment of a monetary penalty pursuant to a settlement or final
32 adjudication shall be made from the title marketing representative's
33 personal funds and not by his or her employer either directly or
34 through the title marketing representative. This article shall not
35 preclude an action against a company that had actual knowledge
36 of the violation by the title marketing representative. *A title*
37 *marketing representative who is issued a certificate of registration*
38 *under this article may not engage in any activity that is otherwise*
39 *prohibited through a separate entity controlled by the title*

1 *marketing representative or by the company or entity that employs*
2 *him or her.*

3 *(e) A title marketing representative who has his or her certificate*
4 *of registration revoked by the department shall not be permitted*
5 *to reapply for another certificate of registration with the*
6 *department for five years from the date of revocation.*

7 ~~12418.5. (a) The commissioner shall issue rules and~~
8 ~~regulations, as necessary, to administer the program established~~
9 ~~by this article.~~

10 ~~(b) The commissioner shall adopt regulations to define~~
11 ~~reasonable expenditures for title marketing representatives pursuant~~
12 ~~to subdivision (d) of Section 12404.~~

13 ~~12418.6. The registration and enforcement provisions of this~~
14 ~~article shall become operative on the date that the regulations~~
15 ~~adopted pursuant to subdivision (b) of Section 12418.5 have been~~
16 ~~approved by the Office of Administrative Law.~~

17 SEC. 3. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.